Grosvenor Orlando Associates, Ltd. d/b/a The Grosvenor Resort *and* Hotel Employees and Restaurant Employees, Local 55, AFL–CIO. Cases 12–CA–18190, 12–CA–18381 (–2, –4, –5), 12–CA–18467, 12–CA–18518, 12–CA–18576, and 12–CA–18830

September 30, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE AND WALSH

On May 18, 1998, Administrative Law Judge Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting and answering brief,[1] and the Charging Party filed cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

For the reasons set forth below, we adopt the judge's finding that the Respondent violated Section 8(a)(5) by bargaining in bad faith.

The Facts

The Respondent operates a resort hotel in Lake Buena Vista, Florida, and has had a series of collective-bargaining agreements with the Union's predecessor, Local 737, covering a bargaining unit of the Respondent's housekeeping, service, and maintenance employees. The parties began bargaining for a successor agreement in November 1995 and the Respondent declared impasse in May or June 1996. Jose Navedo represented the Union in negotiations until April 1996, when Harvey Totzke began serving as the chief union negotiator. Margie Engles served as a union negotiator with both Navedo and Totzke. Director of Human Resources Gary Lambert and Attorney Bob Murphy began negotiations for the Respondent. Attorney Arch Stokes replaced Murphy beginning with the parties' February 14, 1996 meeting.

On December 5, 1995, the Union presented its first draft collective-bargaining agreement and on December 13, the Respondent presented its draft agreement. At the February 21, 1996[3] meeting, the Union presented a grievance regarding an employee's loss of seniority, which the parties settled in the employee's favor. The Respondent also presented and the parties debated a plan that included a 401(K) pension plan. At the close of the meeting, the Respondent stated that it would present a new wage proposal at the next meeting, amend its proposal on seniority, show documents to the Union supporting its wage proposal, and in the meantime, study another hotel's collective-bargaining agreement. On February 28, the parties discussed various provisions. The Respondent rejected the Union's proposal granting housekeeping employees $3.25 for each extra room cleaned over 15. The Union then offered $3 for each extra room for the first year, $3.10 for the second year, and $3.25 for the third year.

On March 18, Totzke informed the Respondent that, due to administrative changes and restructuring of Local 55, certain individuals would now serve as union business representatives with regard to the Respondent. At Totzke's first meeting with the Respondent as the Union's chief negotiator on April 19, 1996, the Union presented a counterproposal, working from the Respondent's draft agreement, which showed movement towards the Respondent's position.[4] The parties agreed to

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[1] The General Counsel also moved to strike the Respondent's brief because it does not include a subject index with page references and an alphabetical table of cases and other authority as required by the Board's Rule 102.46(j). Subsequently, the Respondent submitted a corrected copy of its brief with an index and table of cases. The General Counsel and Charging Party did not object to this filing. As a result, we deny the General Counsel's motion to strike.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We find merit in the General Counsel's exception that the judge erred by failing to include in his recommended Order and notice the standard remedy that the Respondent is required to rescind its unlawful unilateral changes on the Union's request, which the judge inadvertently omitted. Accordingly, we correct the Order and notice to include this standard remedy. See, e.g., *J. W. Rex Co.*, 308 NLRB 473, 475–476 (1992), enfd. mem. 998 F.2d 1003 (3d Cir. 1993); and *Intermountain Rural Electric Assn.*, 305 NLRB 783, 791 (1991), enfd. 984 F.2d 1562 (10th Cir. 1993). We shall also modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co.*, 335 NLRB 142 (2001). We shall further modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container*, 325 NLRB 17 (1997). As further discussed below, we modify the judge's remedy and recommended Order to reflect that the Respondent discharged the unfair labor strikers on September 30, 1996.

[3] All dates are in 1996, unless otherwise noted.

[4] Lambert testified that the Respondent's representatives preferred to work from their own draft agreement rather than the expired agreement

meet the following Tuesday, April 23. Totzke stated that he was ready to negotiate a final agreement on that date and Stokes replied that he no longer bargained for 24 hours a day but would meet for several hours to address the issues.

The Respondent's bargaining notes reflect that, when the parties met on April 23, Stokes asserted that the total union proposal was $215,000 higher than the Respondent's, that he had reviewed the specifics and considered how the parties' philosophies differed, and that they would quickly reach impasse if the Union were to stand on its economic demands. Stokes stated that the sick pay proposal would cost $62,000 and, although he had in the past agreed on "compensable non-productive time," he preferred not to. Stokes added that the Respondent proposed to pay for worktime and that the company needed to pay rates that would attract employees from its competitors. At that meeting, the Respondent agreed to some of the Union's proposals and rejected others. At the next meeting, on May 6, the Respondent proposed that employees waive their rights to any recourse other than arbitration and, after initial opposition, the Union agreed to it. The Respondent's notes show that, as of their May 6 meeting, the parties were in agreement on 14 articles and portions of other articles.[5]

because they disagreed with Navedo's interpretation of the expired agreement's provisions. He also testified that he had a good working relationship with Navedo's predecessors, who worked for the Union's Local 737, before jurisdiction was transferred to Local 55, which was led by Navedo. Lambert further testified that he had problems with Navedo's insistence on allowing Union members to wear Union pins at work because he thought it conflicted with the uniform policy. As the judge found, the Respondent had experienced friction with Navedo because of his declaration that he would use the Union's agreement to organize other hotels.

The Respondent's April 19 bargaining notes state that Totzke opened the meeting by stating that the Union may have had unreasonable expectations, that he had always reached a good agreement with the Respondent in the past, that he considered all previous offers off the table and that the Union was prepared to negotiate and provide a 4-year agreement to show their "change in attitude." Those notes further state that Stokes told the Union that the Respondent would like to express its desire to have the employees' representatives changed back to 737 and that the Respondent could not negotiate to impasse over the issue but it would if it could. Totzke, who served as secretary-treasurer of Local 737 and vice president of the national union's District 4, replied that he was unable to change the name at that time but that the Union would eventually change it and that "for all intents and purposes and interpretations it is reverting back to the way it was and as it will remain."

[5] The Respondent's May 6 bargaining notes reflect that the parties agreed on articles concerning, among other things, employer/union cooperation, management rights, nondiscrimination, the treatment of underpayment or overpayment of wages, interchangibility of work assignments, promotions and transfers, leaves of absence, uniforms and equipment, and interpretation of the agreement. The Respondent's notes also reflect that the parties had substantial or partial agreement on articles addressing work stoppages, hours of work, overtime, job classifications, and wage rates (including shift differentials).

At the parties' May 7 meeting, the Union agreed to the Respondent's proposal on personal days, though they disagreed over whether personal days could be used as sick days, and the Union reduced its proposed pay increase and pay for extra rooms cleaned. The Union accepted some other proposals and maintained its position on others. On May 10, the Respondent provided a draft contract and the Respondent's notes reflect that Stokes stated, "Contract indicated as 'final' is reference to economics maxed out in this offer." The Respondent stated that it continued to adhere to its positions on articles involving the definition of part-time employees, work stoppages, overtime, and vacations; that it would work with the Union on articles involving union activity/checkoff and hours of work; and that it would modify its proposals involving layoffs and recalls, promotions/transfers, and leaves of absence. With regard to part-time employees, the Respondent proposed reducing the scope of the bargaining unit by changing the recognition article to define "part-time" employees as those who work fewer than 30 hours a week, rather than 24 as provided in the parties' previous agreement, and excluding them from the agreement's coverage. The parties agreed to pare down their proposals in order to reach an agreement that could be ratified and agreed to meet at a later date.[6]

On May 14, the Respondent mailed to the Union a draft marked "final collective bargaining proposal." Both the Respondent's May 10 and 14 drafts include provisions changing the health and medical coverage by giving the Respondent authority to unilaterally determine the benefits, costs, and rates of contribution.

In the June 24 meeting, the Union presented its counteroffer. However, the Respondent stated that it was not meeting to negotiate and that the Union had its final offer. The Respondent refused to discuss the Union's counteroffer, stating that the parties were at impasse, and advised the Union of its implementation of some provisions in its offer. The union representatives expressed their desire to negotiate. Although the parties had agreed to meet on June 25 (prior to their June 24 meeting), they did not do so. On June 26, the Union presented the Respondent's last proposed agreement to its membership, who voted it down. The membership authorized the calling of a strike but did not strike. By letter dated June 27, the Union informed the Respondent that the membership had rejected its offer and that the Union stood ready to continue negotiations and suggested mediation.

[6] Union Negotiator Engles, who was credited by the judge, testified that the Respondent's representatives did not say that the Respondent's draft was its final offer.

The parties stipulated that sometime in or about July, the Respondent unilaterally implemented a general wage increase in accord with its May 14 offer, and a general increase in the culinary chef's pay level. Consistent with its final proposal giving it the unilateral right to raise employee premiums, the Respondent informed employees in its July 3 newsletter that it was increasing the employees' insurance premiums. In its July 12 newsletter, the Respondent informed employees of its unilateral implementation of a more liberal policy than it had proposed in negotiations allowing 11 personal days off per year.

The parties met with a Federal mediator on September 5 and 6 without resolving their disagreements. At the hearing, the parties stipulated that the Respondent informed employees in September that it had negotiated agreements with suppliers that would result in the Respondent paying an additional $1 bonus to employees cleaning more than 15 rooms (for a total $3 bonus per room), which increase had been proposed by the Union and rejected by the Respondent.

On September 27, the Union struck and set up a picket line. As discussed in more detail below, the Respondent gave strikers a letter on the morning of September 27 warning that they might be replaced if they did not return to work immediately and a second letter on September 30 stating that they had been permanently replaced and that they should bring their uniforms, work identification, and other items to the Respondent's office on October 3, at which time they would receive their "final check" for their "final wages." On November 15, the strikers unconditionally offered to return to work and, on December 27, the Respondent gave the strikers a third letter stating that the Respondent had given them an opportunity to return to work, that it had hired permanent replacements, and that it would only consider the strikers for a few new positions.

I. BAD-FAITH BARGAINING

A. The Judge's Findings

The judge found that the Respondent did not engage in unlawful regressive bargaining and that the record did not adequately support the complaint allegation that the Respondent bargained without intent to reach agreement when that issue "is isolated from all the circumstances." However, he found that the Respondent bargained in bad faith in three discrete respects. First, he found that the Respondent unlawfully and prematurely declared impasse at a time when it continued to engage in "give and take" bargaining. Second, he found that the Respondent's inclusion in its final proposal of a provision that would remove coverage for part-time employees constituted bad-faith bargaining because a proposed change in the established bargaining unit is a nonmandatory subject. Third, he found that the Respondent engaged in bad-faith bargaining by unilaterally implementing a general wage increase, a general increase in culinary chef's pay level, a personal days-off policy more liberal than that proposed by the Respondent in bargaining, and an additional $1 bonus for each room cleaned over 15.[7]

B. Discussion

We agree with the judge that the Respondent engaged in bad-faith bargaining. In contrast to the judge, however, we find, consistent with the complaint's allegation, that the Respondent's conduct constitutes evidence of overall bad-faith bargaining rather than individual violations of Section 8(a)(5). In short, we find that the Respondent's bad faith in bargaining is shown through its conduct in declaring impasse prematurely, insisting to the declared impasse on a nonmandatory subject, and unilaterally implementing new terms and conditions of employment without bargaining to lawful impasse.

In the process of collective bargaining, there must be a "willingness among the parties to discuss freely and fully their respective claims and demands, and, when these are opposed, to justify them on reason." *NLRB v. George P. Pilling & Son Co.*, 119 F.2d 32, 37 (3d Cir. 1941). The determination as to whether a party's conduct in bargaining evinces a sincere desire to reach an agreement is made by "drawing inferences from the conduct of the parties as a whole." *NLRB v. Insurance Agents' Union*, 361 U.S. 477, 498 (1960). "Specific conduct, while it may not, standing alone, amount to a per se failure to bargain in good faith, may when considered with all of the other evidence, support an inference of bad faith." *Continental Ins. Co. v. NLRB*, 495 F.2d 44, 48 (2d Cir. 1974) (citing *NLRB v. Katz*, 369 U.S. 736, 743 (1962)). Although much of the Respondent's conduct in bargaining may not indicate bad faith when considered "in isolation," we find the Respondent's entire course of conduct did not evince a sincere desire to reach agreement by the time it prematurely declared impasse, insisted to the declared impasse on a nonmandatory subject of bargaining, and unilaterally implemented new terms and conditions of employment.

The Board has long held that premature declaration of impasse may support a finding of bad-faith bargaining. *CJC Holdings, Inc.*, 320 NLRB 1041, 1044–1046 (1996), enfd. mem. 110 F.3d 794 (5th Cir. 1997). Impasse is reached only "'after good-faith negotiations have exhausted the prospects of concluding an agreement,' and there is no realistic possibility that continuation of discus-

[7] We agree with the General Counsel that the judge erred by failing to reflect in his conclusions concerning unilateral changes that the Respondent also unilaterally increased the employees' insurance premiums.

sion at that time would be fruitful." Id. at 1044 (quoting *Television Artists AFTRA v. NLRB*, 395 F.2d 622, 624 (D.C. Cir. 1968), enfg. *Taft Broadcasting Co*., 163 NLRB 475 (1967)).[8] See also *NLRB v. WPIX, Inc*., 906 F.2d 898, 901–902 (2d Cir. 1990), cert. denied 498 U.S. 921 (1990) (parties' exaggerated expressions of offense, posturing and dilatory tactics did not end prospects of reaching agreement). The party asserting impasse has the burden of proving that it exists. *Outboard Marine Corp*., 307 NLRB 1333, 1363 (1992), enfd. mem. 9 F.3d 113 (7th Cir. 1993). Where there is genuine impasse, neither party is willing to move from its position in spite of the parties' best efforts to achieve agreement. E.g., *Grinnell Fire Protection Systems Co*., 328 NLRB 585, 586, and 596–599 (1999), enfd. 236 F.3d 187 (4th Cir. 2000).

We find that the Respondent prematurely declared impasse and its doing so was indicative of bad faith. Throughout negotiations, and in particular during the weeks prior to the Respondent's declared impasse, the Respondent and the Union exchanged offers, debated proposals, agreed to reevaluate their positions and, in fact, modified their proposals. For example, in Totzke's first meeting as chief union negotiator on April 19, the Union presented a counteroffer that showed movement towards the Respondent's positions, and on April 23, the Respondent agreed to some of the Union's proposals and rejected others. On May 6, the record reflects that the parties had reached agreement on many articles and, after debating the issue, the Union agreed to a proposal waiving employees' rights to recourse outside of arbitration. On May 7, the Union reduced the amount it proposed for housekeeping pay and agreed to the Respondent's personal day proposal while disagreeing on other matters.

Although the Respondent's notes indicated that its representative stated on May 10 that the draft contract was "indicated as 'final'" in a reference to "economics are maxed out in this offer," it continued to negotiate over substantive proposed terms. In the May 10 meeting, it explained that it was willing to work with the Union concerning articles involving hours of work, union activity and checkoff, promotion and transfers, and leaves of absence. As the judge found, these comments show that the parties continued to engage in give-and-take bargaining on May 10. At the end of the meeting, the parties agreed to pare down their proposals to reach agreement in future meetings and the Respondent did not inform the Union that it viewed negotiations as having been concluded. Thus, both parties demonstrated considerable flexibility and willingness to compromise their positions. See *Wycoff Steel, Inc*., 303 NLRB 517, 523 (1991) (no impasse where both parties showed movement and union advised employer of its willingness to be flexible on terms and times of meeting).

Despite the apparent flexibility demonstrated by the parties at the May 10 meeting following the presentation of the Respondent's final offer, the Respondent thereafter insisted that its draft proposal of May 10 was on its face a "final offer." The Respondent then submitted a finished contract proposal to the Union by mail dated May 14, 1996. When the parties next met on June 24, the Union presented a counterproposal but the Respondent replied that it was not there to negotiate and that the Union had received its final contract proposal.

In light of the flexible bargaining postures of both the Union and the Respondent following the presentation of the "final offer," the Union on May 10 reasonably believed, and expressed its belief, that further negotiations might produce an agreement. Thus, at that time, the parties did not have a contemporaneous understanding that they were at impasse. See *Huck Mfg. Co. v. NLRB*, 693 F.2d 1176, 1186 (5th Cir. 1982) (neither party must be willing to compromise for impasse). See also *Beverly Farm Foundation*, 323 NLRB 787, 793 (1997), enfd. 144 F.3d 1048 (7th Cir. 1998) (no impasse where union not wedded inalterably to any particular position and parties not stalemated). Despite this flexibility, the Respondent thereafter simply stated that it had made a final proposal on May 10 and that the parties were at impasse. We find that this declaration of impasse while there was still flexibility in the bargaining positions was premature.[9]

[8] In *Taft Broadcasting Co.*, 163 NLRB at 478, the Board set forth the following factors for determining whether parties have reached impasse: the parties' bargaining history, their good faith, the length of time spent in negotiations, the importance of the issues about which the parties disagree, and the parties' contemporaneous understanding of the status of negotiations.

[9] We find no merit in the Respondent's assertion, in essence, that it lawfully declared impasse because it had bargained for 6 months without resolution of important issues and the Union changed negotiators. As discussed above, the parties reached full or partial agreement on many substantive issues and the parties were not deadlocked on any issue. See *NLRB v. WPIX, Inc*., 906 F.2d at 901–902 ("If—as the Company claims—all parties knew those key economic issues could not be resolved, one might well wonder why the parties would have bothered to discuss in the meantime what the company now dismisses as insignificant issues"). With regard to remaining issues, the Respondent, until it declared impasse, and the Union showed a willingness to discuss the issues and potentially make further concessions.

Nor do we find that the Union's change in negotiators supports a finding that the Respondent lawfully declared impasse. The Respondent admits that the first negotiator, Navedo, caused friction. The second negotiator, Totzke, expressed and showed his willingness to compromise and bargain, agreed to work from the Respondent's draft agreement, and did not delay bargaining. Cf. *Bottom Line Enterprises*, 302 NLRB 373, 374–375 (1991), enfd. mem. 15 F.3d 1087 (9th Cir. 1994) (union's cancellation of bargaining session insufficient to show intransigence to justify employer's unilateral implementation).

We also find that the Respondent's insistence on changing the scope of the bargaining unit by expanding the definition of the excluded part-time employees supports a finding of bad-faith bargaining. The Board has long held that "[u]nit scope is not a mandatory bargaining subject, and consequently a party may not insist to impasse on alteration of the unit." E.g., *Bozutto's, Inc.*, 277 NLRB 977 (1985). See also *Frontier Hotel & Casino*, 318 NLRB 857, 868, 872 (1995), enfd. in relevant part sub. nom. *Unbelievable, Inc. v. NLRB*, 118 F.3d 795 (D.C. Cir. 1997) (bargaining unit description clauses are nonmandatory subjects of bargaining and may be altered only by mutual agreement); and *Idaho Statesman*, 281 NLRB 272, 275–277 (1986), enfd. 836 F.2d 1396 (1988) (unit scope is permissive subject). Here, the Respondent presented the Union with a draft agreement that included this provision covering a permissive subject of bargaining, declared that its draft was its last and final offer, and declared impasse. This conduct is evidence of bad faith.[10]

We further find that the Respondent showed bad faith in bargaining by unilaterally implementing new terms and conditions of employment. As the Supreme Court decided in *NLRB v. Katz*, 369 U.S. 736, 743 (1962), an employer's unilateral change in conditions of employment under negotiation is tantamount to a "refusal to negotiate in fact." Consistent with the Court's holding, the Board has long held that an employer's unilateral changes in mandatory conditions without bargaining to a lawful impasse indicates bad faith in bargaining. E.g., *Fitzgerald Mills Corp*., 133 NLRB 877, 882 (1961), enfd. 313 F.2d 260 (2d Cir. 1963), cert. denied 375 U.S. 834 (1963). Moreover, "[t]he employer is prohibited from making unilateral changes in working conditions during negotiations—even though the terms of employment are thereby improved—lest the union be denigrated in the employees' eyes and its existence, as an inevitable result, imperiled." *General Transformer Co*., 173 NLRB 360, 376 (1968) (citing *NLRB v. Crompton-Highland Mills, Inc.*, 337 U.S. 217 (1949) (employer unlawfully improved wages during bargaining)). Even after a valid impasse has been reached, the implementation of terms more favorable than those offered during bargaining constitutes evidence of bad faith. *NLRB v. Katz*, supra, 369 U.S. at 745. In this case, the Respondent unilaterally implemented a general wage increase, a general increase in culinary chef's pay level, a personal days-off policy more liberal than that it proposed in bargaining, and increased the employees' insurance premiums consistent with a provision in its final with a provision in its final offer giving it the unilateral right to raise employee premiums. Several months after announcing these changes, the Respondent announced and implemented an additional $1 bonus for each room cleaned over 15. The Respondent's unilateral implementation of these terms, which both take from and add to the employees' wages and benefits, also support our finding of bad-faith bargaining.

II. THE DISCHARGES

A. The Judge's Findings

We agree for the reasons set forth by the judge that the strike, beginning on September 27, 1996, constituted an unfair labor practice strike. The judge also found, albeit implicitly, that the Respondent violated Section 8(a)(3) and (1) by refusing to reinstate the strikers after they unconditionally offered to return to work on November 15 or soon thereafter. The judge further found that the Respondent unlawfully discharged the strikers through its letter to them on December 27 in which it stated that it had hired permanent replacements and would only consider them for new employment. The judge, however, failed to find that the Respondent's previous letter to the strikers, dated September 30, constituted an act of discharge. We agree with the General Counsel's and the Charging Party's exceptions to this aspect of the judge's decision.

B. Discussion

The Respondent gave strikers a letter on the morning of the first day of the strike on September 27 stating that they should return to work their shifts immediately or they "may be replaced." The Respondent gave them a second letter on September 30 stating that they had been permanently replaced and that they should bring "all their uniforms, hotel ID/timecard, and any other [of the Respondent's] property" to the Respondent's office on October 3, at which time they would receive their "final check" for their "final wages," including any outstanding vacation pay. Under both the parties' expired collective-bargaining agreement and the terms implemented by the Respondent after it declared impasse, employees are entitled to outstanding vacation pay, in lieu of time off, only when their employment has been terminated. On November 15, the strikers unconditionally offered to return to work and, on December 27, the Respondent gave the strikers a third letter stating that the Respondent had given them an opportunity to return to work, that it had hired permanent replacements, and that it would only consider the strikers for a few new positions.

The test for determining whether employees have been discharged is "whether the employer's statements or conduct 'would reasonably lead the employees to believe that they had been discharged.'" *Kolkka Tables & Finnish*

[10] The Respondent defends by arguing that the parties never bargained over the exclusion and thus never bargained to impasse over it. That fact is beside the point; the Respondent clearly insisted to impasse on alteration of the unit by including the provision in its "final" offer and declaring imasse.

American Saunas, 335 NLRB 844, 845 (2001), quoting *NLRB v. Hilton Mobile Homes*, 387 F.2d 7, 9 (8th Cir. 1967). "Moreover, the employer will be held responsible when its statements or conduct create an uncertain situation for the affected employees." Id. The employees would reasonably have understood that they were discharged through the September 30 letter. It directed the strikers to return their uniforms, hotel identification and timecards, and any other property of the Respondent and pick up their final paycheck for their final wages that would include any outstanding vacation pay. While some of these actions may be, without more, consistent with how employers would treat strikers, the requirement that they pick up vacation pay would lead reasonable employees to conclude that they had been discharged because, here, they would receive such vacation pay only after discharge.[11]

Although economic and unfair labor practice strikers generally must request reinstatement to return to work, "[w]hen strikers are unlawfully discharged, they are not required to request reinstatement since, by discharging them, the employer has signaled that he does not regard them as strikers entitled to reinstatement upon request." *Naperville Ready Mix, Inc.*, 329 NLRB 174, 185 (1999), enfd. 242 F.3d 744 (7th Cir. 2001). Thus, as the Board has long held, "a discharged striker is entitled to backpay from the date of discharge until the date he or she is offered reinstatement." *Abilities & Goodwill, Inc.*, 241 NLRB 27 (1979), enf. denied on other grounds 612 F.2d 6 (1st Cir. 1979). See also *Citizens Publishing Co*., 331 NLRB 1622 fn. 2 (2000), enfd. 263 F.3d 224 (3d Cir. 2001) (backpay from date of discharge rather than date of unconditional offer to return); and *Garrett Railroad Car & Equipment, Inc*., 683 F.2d 731, 740–741 (3d Cir. 1982) (backpay is awarded to wrongfully discharged striker from date of unlawful discharge rather than subsequent date on which strike ended). Accordingly, September 30 is the date of discharge for purposes of calculating back pay in compliance proceedings, and, accordingly, we amend the judge's remedy and order.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(5), (3), and (1) of the Act, we shall order the Respondent to cease and desist from engaging in such conduct and to take certain steps to effectuate the policies of the Act. In view of our finding that the Respondent was discharged on September 27, 1996 (the beginning of the strike), and refused to reinstate, the employees who engaged in an unfair labor practice strike, we shall order the Respondent to offer them immediate and full reinstatement to their former positions or, if any of those positions no longer exist, to a substantially equivalent positions, displacing, if necessary, employees hired since on or about September 30, 1996, without prejudice to their rights and privileges previously enjoyed, and to make each of them whole for all loss of wages or other benefits suffered as a result of the Respondent's unfair labor practices. Backpay is to be computed in the manner set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 289 NLRB 1173 (1987).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below, and orders that the Respondent, Grosvenor Orlando Associates, Ltd. d/b/a the Grosvenor Resort, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees that there was no contract with their exclusive collective-bargaining agent and that it could unilaterally make changes in wages, hours, and working conditions; prohibiting its employees from discussing the Union during work and threatening its employee with being sent home or fined if the employee talked to another employee about the Union; discriminatorily prohibiting its employees from wearing union baseball caps; threatening its employee that the employee would be replaced and recalled at the Respondent's discretion; and promising its employee that it had instituted a unilateral change by scheduling work by seniority and planning to grant a $3 bonus for cleaning rooms in excess of 15 each because of its employees' union activities.

(b) Refusing to bargain in good faith with Hotel Employees & Restaurant Employees Union, Local 55, AFL–CIO, as the exclusive collective-bargaining representative of its employees in the following appropriate collective-bargaining unit:

> All housekeeping employees, bellpersons, cashiers, convention setup employees, lounge employees, dining room employees, pool bar and grill employees, kitchen department employees, room service employees, banquet employees, servi-bar employees, and maintenance department employees, but excluding casual employees, guards, and supervisors as defined in the Act.

[11] With regard to four strikers (Andres Alvarez, Martin Malagon, Earl Rankin, and Isidro Rodriquez), the General Counsel and the Charging Party argue that the Respondent discharged them for reasons the Board found unlawful in *American Linen Supply Co*., 297 NLRB 137 (1989), enfd. 945 F.2d 1428 (8th Cir. 1991). Because we find that all of the strikers were discharged on September 30, we find it unnecessary to address that question.

(c) Unilaterally changing bargaining unit employees' wages, hours, or terms and conditions of employment without bargaining with the Union to an agreement or a lawful impasse.

(d) Bypassing the Union and dealing directly with bargaining unit employees.

(e) Discharging employees because the employees engaged in protected strike or picketing activities in support of the Union.

(f) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with Hotel Employees & Restaurant Employees Union, Local 55, AFL–CIO, as the exclusive collective-bargaining representative of its employees in the above stated appropriate collective-bargaining unit and reduce to writing and execute all agreements reached through bargaining.

(b) On the Union's request, cancel and rescind all or part of the terms and conditions of employment unilaterally implemented by the Respondent on or after June 1996 following the Respondent's premature declaration of impasse and retroactively restore preexisting terms and conditions of employment, but nothing in this Order is to be construed as requiring the Respondent to cancel any unilateral change that benefited the unit employees without a request from the Union.

(c) Offer each of the below listed employees immediate and full reinstatement to their former positions or, if any of those positions no longer exists, to substantially equivalent positions, displacing if necessary, employees hired since on or about September 27, 1996, without prejudice to their rights and privileges previously enjoyed, and make each whole for all loss of wages or other benefits:

Andres Alvarez	Robert Baity
Rosetta Brown	Hector Caban
Gilberto Caranza	Dorothy Collier
Ella Mae Davis	Lindsey Day
Carlos Delgado	Enoch Deneus
Oslaine Desir	Aida Febles
Maria Gillaspie	Deborah Goodman
Israel Hernandez	Lidia Hernandez
Maria Hernandez	Betty Jackson
Mollie Jackson	Jules Josaphat
Therese Josaphat	Dorzelia Joseph
Marie Laguerre	Paul Leblanc
Adisseau Louisius	Martin Malagon
Lourdes Matos	Frederick Meradin
Deborah Montgomery	Chaeirable Ovince
Joseph Pascal	Louis Preval
Maria Quevedo	Earl Rankin
Isidro Rodriquez	Feleza Ryland
Andriana Sepulueda	Raymond Smith
Flor Javier	Cleofas Viscaine
Margarita Jimenez	Flossie Williams
Francisco Abrell	Norma Jiminez

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of the above-named employees, and notify each one of those employees in writing that this has been done and that the discharge will not be used against them in any way.

(e) Within 14 days after service by the Region, post at its facility in Orlando, Florida, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 1995.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY THE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[12] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid and protection
To choose not to engage in any of these concerted activities.

WE WILL NOT threaten our employees that there is no collective-bargaining contract and that we may unilaterally change wages, hours, and terms and conditions of employment.

WE WILL NOT prohibit our employees from discussing the Union during work.

WE WILL NOT threaten our employees with being sent home or fined because they discuss the Union with another employee during work.

WE WILL NOT discriminatorily prohibit our employees from wearing union insignia including baseball caps.

WE WILL NOT threaten our employees that they may not picket on behalf of the Union.

WE WILL NOT threaten our employees that employees may be considered strikers and replaced if they picket on their own time.

WE WILL NOT threaten our employees that picketing employees may be reinstated at our discretion.

WE WILL NOT fail or refuse to bargain in good faith with Hotel Employees & Restaurant Employees Union, Local 55, AFL–CIO, as collective-bargaining representative of the employees in the following appropriate bargaining unit:

> All housekeeping employees, bellpersons, cashiers, convention setup employees, lounge employees, dining room employees, pool bar and grill employees, kitchen department employees, room service employees, banquet employees, servi-bar employees, and maintenance department employees, but excluding casual employees, guards, and supervisors as defined in the Act.

WE WILL NOT unilaterally change wages, hours, and terms and conditions of employment for bargaining unit employees at a time when negotiations are not at impasse.

WE WILL NOT discharge our employees because they engage in an unfair labor practice strike.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL bargain in good faith with Hotel Employees & Restaurant Employees Union, Local 55, AFL–CIO, as collective-bargaining representative of the employees in the above-described appropriate bargaining unit.

WE WILL, on the Union's request, cancel and rescind all or part of the terms and conditions of employment unilaterally implemented on or after June 1996 following the premature declaration of impasse and retroactively restore preexisting terms and conditions of employment, but nothing in the Board's Order is to be construed as requiring us to cancel any unilateral change that benefited the unit employees without a request from the Union.

WE WILL offer each of the below listed employees immediate and full reinstatement to their former positions or, if any of those positions no longer exist, to a substantially equivalent position, displacing if necessary, employees hired since on or about September 27, 1996, without prejudice to their rights and privileges previously enjoyed, and make whole for all loss of wages or other benefits, caused by our failure to reinstate each employee immediately upon that employee's unconditional offer to return to work:

Andres Alvarez	Robert Baity
Rosetta Brown	Hector Caban
Gilberto Caranza	Dorothy Collier
Ella Mae Davis	Lindsey Day
Carlos Delgado	Enoch Deneus
Oslaine Desir	Aida Febles
Maria Gillaspie	Deborah Goodman
Israel Hernandez	Lidia Hernandez
Maria Hernandez	Betty Jackson
Mollie Jackson	Jules Josaphat
Therese Josaphat	Dorzelia Joseph
Marie Laguerre	Paul Leblanc
Adisseau Louisius	Martin Malagon
Lourdes Matos	Frederick Meradin
Deborah Montgomery	Chaeirable Ovince
Joseph Pascal	Louis Preval
Maria Quevedo	Earl Rankin
Isidro Rodriquez	Feleza Ryland
Andriana Sepulueda	Raymond Smith
Flor Javier	Cleofas Viscaine
Margarita Jimenez	Flossie Williams
Francisco Abrell	Norma Jiminez

GROSVENOR ORLANDO ASSOCIATES, LTD. D/B/A THE GROSVENOR RESORT

Dave Anhorn, Esq. and *Michael Mac Harg, Esq.,* for the General Counsel.

Arch Stokes, Esq. and *Christopher Terrell, Esq*., of Atlanta, Georgia, for the Respondent.

Richard Siwica, Esq., of Orlando, Florida, for the Charging Party.

DECISION

STATEMENT OF THE CASE

PARGEN ROBERTSON, Administrative Law Judge. This hearing was held on January 5–8, 1998, in Orlando, Florida.

All parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Respondent, Charging Party (Union), and General Counsel filed briefs. Upon consideration of the entire record and the briefs, I make the following findings.

I. JURISDICTION

Respondent has been wholly owned by Grosvenor Orlando Associates, Ltd. at material times. Grosvenor is a partnership doing business as the Grosvenor Resort, with an office and place of business in Lake Buena Vista, Florida, where it is engaged in the operation of a hotel providing food and lodging. During the past 12 months, Respondent, in its business operations, derived gross revenues in excess of $500,0000 and purchased and received at its Lake Buena Vista facility products, goods and materials valued in excess of $5000 directly from points outside Florida. I find that Respondent has been an employer engaged in commerce at material times.

Respondent's Lake Buena Vista facility is located at Walt Disney World.

II. LABOR ORGANIZATION

The parties stipulated that both the Charging Party (Union) and its predecessor (Local 737) have been at material times, labor organizations within the meaning of Section 2(5) of the Act.

The record showed that Respondent and Local 737 have been parties to a series of collective-bargaining agreements.

A. Supervisory Issue

The parties stipulated that the employees alleged to be supervisors are supervisors as defined in the Act.

B. The Contested Issues

General Counsel alleged that Respondent engaged in violations of Section 8(a)(1):

By Mike Childs threatening employees that there was no contract and Respondent could make changes in wages, hours, and working conditions:

Debra G. Goodman worked for Respondent in housekeeping. Mike Childs is Respondent's chief engineer. After the employees voted to strike in June 1996, Goodman had a conversation with Childs in the hallway going back to the human resource department. Goodman explained to Childs that she was upset about Respondent implementing the contract the employees had rejected. Goodman testified:

> (Childs told her) you all was stupid for not reading the contract because if you read it, you'd know the Company gave a fair contract. And he said but you just went by what your union people said, and he says—I said that we voted no on that contract. How can you implement something on it like the vacation when we said no. He said you voted no, that means you have no contract that means we can implement any part of the contract that we want to.

Childs did not dispute Goodman's testimony.

Findings

Credibility

In view of Debra Goodman's demeanor and the full record, I credit her testimony. Mike Childs did not dispute her.

Conclusions

The credited testimony proved that employee Goodman was told by a supervisor, an agent of Respondent, that the employees did not have a collective-bargaining agreement and that Respondent could implement changes. Childs made that comment to Goodman while the Union represented unit employees and the parties were involved in collective-bargaining negotiations. I find that those comments had the tendency to coerce employees from engaging in protected activity and constitute violation of Section 8(a)(1) of the Act.

> By Mike Childs threatening employees with suspension or discharge for talking about the Union:
> By Mike Childs prohibiting employees from being present in a break/lunch area before employees' scheduled shift time:

Around September 23, 1996, Mike Childs came to Earl Rankin and said "if I hear you speaking about the Union during work hours, I am going to send you home or fine you." According to Earl Rankin, he had talked with an employee named Calvin at work earlier that day about Calvin not going out if a strike was called.

Michael Childs testified but he did not admit or deny the above allegations.

Arley Arwood works for Respondent as a maintenance II engineer. Arwood was called by Respondent. He testified that there is a rule that employees cannot talk about the Union except during break and lunchtime.

Findings

Credibility

Although I was not impressed with Earl Rankin's demeanor during cross-examination where he was somewhat evasive in his answers, I do credit his testimony regarding Mike Childs. Childs testified but he did not dispute Rankin's testimony.

Conclusions

General Counsel cited *Our Way, Inc*., 268 NLRB 394 (1983), to support its contention that Respondent engaged in unlawful conduct by prohibiting Rankin from discussing the Union during work. There was no showing that employees were prohibited from discussing any other subject. I find that Childs did prohibit employee Rankin from discussing the Union and that Childs threatened Rankin with being sent home or fined. I find that activity constitutes a violation of Section 8(a)(1) of the Act.

> By Gary Lambert prohibiting an employee from wearing a Union cap:
> By Bob Jeremiah prohibiting an employee from wearing a Union cap:

Earl Rankin testified that he was formerly employed by Respondent for 14 years. He was a carpenter in the engineering department and he was the head shop steward for the Union for the last 3 years he worked. Rankin was the employee that solicited union cards from maintenance department employees. That action eventually resulted in the maintenance department being added to the recognized collective-bargaining unit. Rankin was on the union negotiating committee.

Rankin testified that he wore baseball caps to work every day including caps with insignia from building supply, paint, wallpaper and plumbing companies and the Union. Rankin also wore union buttons to work.

On June 27, 1996, Director of Engineering Mike Childs stopped Earl Rankin at work and told him to take off his union pin. The pin was about one inch by an inch and a quarter and read "H.E.R.E., AFL–CIO, Local 55." Childs told Rankin that Lambert and Goss wants the pin off. Rankin removed the pin and did not wear that particular pin to work after that incident.

Earl Rankin testified that Bob Jeremiah came to Rankin at work on July 2, 1996, and told Rankin to remove his union baseball cap. Jeremiah told Rankin that he could not wear the cap again. Jeremiah said that Lambert had given those directions. Rankin removed the cap and did not wear it to work again.

Michael Childs testified that he told Earl Rankin that the only hats that are allowed to be worn by employees are hats that have no logos and hats that have a Grosvenor logo. He recalled telling Earl Rankin to remove a hat with a union logo. Childs testified that he also told Rankin on occasion that he could not wear hats with other logos. Childs denied that Rankin wore hats to work other than the one with the union logo and one with AGRA.

Around 4 p.m. on July 2, Earl Rankin talked with Gary Lambert. Rankin asked why he was being harassed. Lambert replied that "we had spoken about the pin and had made the decision." Lambert said that as far as the hat is concerned, there is too much friction and Rankin could not wear the hat. Lambert said that the shop stewards may wear the union pins but that the members could not. At the time of that conversation people were wearing a smaller union pin. The new pin was about one inch by one inch.

Gary Lambert testified that Earl Rankin did come into his office around July 1, 1996, and that he told Rankin that he could not wear his union hat. Lambert testified that Respondent had made a tentative agreement with Jose Navedo permitting union stewards to wear particular union pins that had been obtained by Navedo. Lambert told Rankin that he could wear his union pin but not his union hat.

Supervisor Bob Jeremiah did not testify. Arley Arwood works for Respondent as a maintenance II engineer. He testified that employees in engineering are allowed to wear white hats if they are painters, and otherwise to wear hats with no logo or with the Grosvenor logo and that when supervisors notice anyone wearing a hat that does not meet those standards, the supervisor tells the employee to take off the hat.

Findings

Credibility

Again, although Earl Rankin appeared to be somewhat evasive on cross examination, the events on July 2, 1996, are not seriously disputed. I credit the evidence showing that two or three of Respondent's supervisors told Earl Rankin to remove his union cap. Michael Childs admitted that he told Rankin to remove his union cap. Childs also testified that he has on other occasions told Rankin to remove other baseball caps.

Childs' testified that he told Rankin on occasion that he could not wear hats with logos other than Respondent's. He also testified that he saw Rankin wear only two of several hats that did not comply with Respondent's rule. Those two were the union cap and an AGRA cap. The evidence regarding why Rankin was told to remove the union cap is inconsistent. Childs testified that he told Earl Rankin that he could not wear the union cap because employees were prohibited from wearing caps with logos other than Respondent's. Rankin's testimony that Jeremiah told him that Lambert had given instructions that Rankin must remove the union cap and not wear it again, was unrebutted. Gary Lambert testified, on the other hand, that he told Rankin that he could not wear the union cap because Respondent had an agreement with Union Agent Jose Navedo that union stewards could wear a particular union pin.

As shown herein, Arley Arwood demonstrated poor recollection during cross-examination. I was not impressed with his demeanor and I do not credit his testimony.

In view of the entire record, I am convinced and credit Earl Rankin's testimony showing that employees were permitted to wear caps other than caps without logos and caps with Respondent's logo. I find that the full credited record proved that Respondent required Earl Rankin to remove his union cap even though it permitted employees to wear caps with logos other than that of the Union or Respondent.

Conclusions

As shown herein the parties did not reach a collective-bargaining agreement and it was proposed by Respondent that any agreement was contingent on agreement for an entire contract. With that in mind I find that the record failed to show that Respondent and the Union, through Jose Navedo, ever reached binding agreement to limit the wearing of union insignia.

Respondent offered evidence that it was required to enforce rules promulgated by Disney. However, there was no showing that those rules, referred to on occasion as grooming books, were ever applied to employees that did not have regular guest contact nor was there a showing that Respondent could discriminatorily prohibit the wearing of union insignia because of grooming requirements.

The credited testimony supports General Counsel's allegations. Michael Childs first told Earl Rankin to remove his union pin. Afterward, Supervisors Jeremiah and Childs told Rankin to remove his union cap.

Michael Childs testified that Rankin was in violation of rules prohibiting any caps with logos other than Respondent's. Director of Human Resources Gary Lambert testified but he did not mention a rule against wearing caps with logos other than Respondent's. Instead, according to Rankin's recollection of his meeting with Lambert, Lambert told him that "there was too much friction and Rankin could not wear the hat." Lambert testified that he told Rankin the decision was based on Respondent's agreement with Jose Navedo that union stewards could wear a particular union pin.

In view of my credibility findings including the testimony that employees wore caps other than Respondent's or the Union's, I find that Respondent promulgated and applied a rule against wearing a union hat in a disparate manner. I find that conduct constitutes a violation of Section 8(a)(1) of the Act.

> By Ethyl Brenner threatening employees with discharge and that recall after strike would be at Respondent's discretion:
> By Ethyl Brenner threatening to continue scheduling by seniority despite Respondent having demanded elimination of seniority during negotiations:
> By Ethyl Brenner bypassing the Union and dealing directly with employees by announcing an increase in premium pay for extra rooms:

In early September 1996, Debra Goodman talked to Supervisor Ethyl Brenner about whether she should strike. Goodman suggested to Brenner that she could go out and picket on her days off, on her own time. Brenner said no, if you go out there on the picket line, you're classified as a striker, and you can be replaced. Goodman said that after this is over Respondent would have to give her back her job. Brenner said no, not necessarily, if the replacement is good we do not have to bring you back. Brenner asked Goodman why she was going out on strike and Goodman replied because Respondent has taken her seniority. Brenner said no, we're scheduling by seniority. Goodman said that Respondent would not budge on room bonus and Brenner said you're going to be getting $3 for every extra room after 15 starting Sunday. Brenner asked Goodman why did she want to sacrifice her job when Respondent was scheduling by seniority and giving the $3.

Ethyl Brenner is Respondent's assistant executive housekeeper. She testified that Goodman did come into her office and ask if she went out on strike would she lose her job. Brenner testified that she told Goodman that he job could be replaced. Brenner denied telling Goodman that she could be fired.

Findings

Credibility

As shown above, I credit the testimony of Deborah Goodman. Ethyl Brenner's testimony was in substantial accord with Goodman.

Conclusions

The credited testimony proved that Respondent supervisor Brenner told Goodman that she could be replaced even if Goodman picketed on her own time. Brenner went on to say that if Goodman was replaced, Respondent would not have to give her job back after the strike and Brenner told Goodman that Respondent would schedule by seniority. Goodman was aware that Respondent was insisting during negotiations that the contract would not include a requirement that it schedule by seniority and Respondent's last contract offer had excluded a provision that it would schedule work by seniority. Brenner also told Goodman that Respondent would give housekeeping employees $3 for each extra room over 15. At that time Goodman knew that Respondent had refused to agree to the Union's proposal that it give $3 for each extra room over 15.

The full record proved that Goodman was relying on correct information. Respondent had bargained to remove from the contract seniority for scheduling and it had rejected the Union's proposal to give housekeeping employees $3 for each extra room over 15.

The Board has found that an employer engages in illegal activity by threatening employees with loss of jobs for striking. In *Gibson Greetings, Inc*., 310 NLRB 1286 (1993), the employer wrote employees that it would "begin to hire and train new employees immediately so you should understand that you have a right to work here which is protected by federal and state law if you return to work before you are replaced. It really is up to you." The employer concurrently published a notice in the newspapers indicating the rights of replacement workers would be protected. The Board held that Gibson Greetings violated Section 8(a)(1) through the above action in that it constituted threats that employees by striking, will be deprived of their right to get their jobs back. The Board explained that even economic strikers that are permanently replaced, have the right to their jobs back whenever their jobs become available.

Here, Respondent went further than the employer in *Gibson Greetings, Inc.*, by threatening Debra Goodman with loss of job for picketing on her own time even though Goodman indicated that she would continue to work. I find that Respondent's conduct constituted another violation of Section 8(a)(1). I also find that Brenner told Goodman that Respondent would schedule by seniority and institute an increase in premium pay for extra rooms, at a time when the parties were not at impasse, in further violation of the Act.

> By Mark Rawlins bypassing the Union and dealing directly with employees by announcing an increase in premium pay for extra rooms:
> By Mark Rawlins by passing the Union and dealing directly with employees by announcing a bonus program, parties and gifts for housekeeping employees:

Feliza Ryland and Debra Goodman attended a meeting in the cafeteria. Executive Housekeeper Mark Rawlins spoke. Other housekeeping supervisors were with Rawlins. Rawlins told the employees that Respondent was going to start giving them $3 extra for each room cleaned over 15 and that Respondent was working to give the employees additional incentives.

The parties stipulated that Mark Rawlins met with housekeeping employees in September 1996 and informed those employees that Respondent had negotiated contracts with wholesale suppliers whereby those suppliers agreed to pay an additional amount of money which would be given to housekeeping employees in the amount of an additional $1 per room and that that additional $1 per room was paid over and above the contract amount of $2 premium pay from September 1996.

Findings

Credibility

I credit the testimony of Feliza Ryland and Debra Goodman. That testimony was not disputed. I also credit the stipulation that Mark Rawlins met with housekeeping employees in September and told employees that Respondent would pay housekeeping employees an additional $1 per room over and above the contract amount of $2 per room.

Conclusions

The credited testimony proved that Mark Rawlins told employees at a time when the parties were not at impasse, that Respondent was going to give them $3 extra for each room over 15 and that Respondent was working to grant additional benefits. Rawlins also announced to housekeeping employees they would receive an additional $1 per room over and above the contract amount of $2 premium pay. By those actions Respondent was dealing directly with employees and bypassing the Union, over matters that were under discussion in negotiations with the Union in violation of Section 8(a)(1).

General Counsel alleged that Respondent engaged in other violations of the Act:

General Counsel alleged that the Union or its predecessor, represented Respondent's employees in the following described appropriate unit:

All housekeeping employees, bellpersons, cashiers, convention setup employees, lounge employees, dining room employees, pool bar and grill employees, kitchen department employees, room service employees, banquet employees, servi-bar employees, and maintenance department employees, but excluding casual employees, guards, and supervisors as defined in the Act.

Findings

Respondent and the Union or its predecessor were parties to collective-bargaining agreements. The last agreement was effective on its terms from 1992 until October 31, 1995, for employees in the above unit. The record shows without dispute that the parties met and negotiated toward a successor contract, until negotiations terminated as shown herein. Those negotiations involved the same bargaining unit shown above which was the unit included in the parties' last contract. In view of the full record I find that the Union has represented the unit employees at all material times.

General Counsel alleged that Respondent engaged in bad-faith bargaining by:

regressive bargaining proposals:

demanding a change in the scope of the Unit:

demanding the unilateral right to terminate negotiated benefits:

refusing to engage in substantive discussions with a mediator:

threatening to declare impasse:

prematurely declaring impasse:

The parties met at various times from November 1995 through September 1996 in collective-bargaining negotiations. Negotiations including Jose Navedo for the Union, occurred before April 1996. The parties stipulated into evidence Respondent's notes of bargaining sessions including sessions on December 4, 5, 13, and 14, 1995, February 14, 21, and 28, March 7, April 19 and 23, May 6, 7, and 10, and June 24, 1996 (Jt. Exh. 1). The March 7 negotiations were conducted on the phone.

The Union proposed a collective-bargaining agreement on December 5, 1995 (GC Exh. 34).

Respondent's bargaining notes received as Joint Exhibit 1 show that Respondent expressed a willingness to supply the Union with information on request during the December 5, 1995 meeting.

During the December 13 session Respondent presented a proposed contract and pointed out that the shaded areas in that proposed contract represented topics or areas agreed to during the last negotiation session. The parties met on December 14.

Respondent's notes of negotiation meetings show that Murphy appeared as Respondent's attorney at the December 14, 1995 negotiation meeting. Arch Stokes first appeared as Respondent's attorney at the February 14, 1996 meeting.

The notes of the February 14, 1996 meeting show Lambert, Attorney Stokes, Navedo, and members of the union negotiating committee were present. Navedo, Stokes, and each member of the union negotiating committee explained what each of them wanted to get from the negotiations.

Lambert, Stokes, Navedo, and employee members of the union negotiating committee met again on February 21, 1996. A grievance was presented regarding loss of seniority by employee Mary Woodard because she did not return from a medical leave of absence until shortly after 90 days. The parties agreed to resolve the grievance in favor of Mary Woodard. Respondent presented the Union with a proposal that included a 401K plan. After the Union took time to examine the proposal the mater was debated. At the close of the meeting Respondent stated it would present a new wage proposal at the next meeting; that its proposal on seniority would be reviewed and amended; Respondent agreed to show the Union its documents used to arrive at its wage proposal and Respondent would study and compare the collective bargaining at the Royal Plaza Hotel with its own proposals. The bargaining notes show that the Union stated among other things, that it needed to be presented with a final contract.

Respondent's bargaining notes, Joint Exhibit 1, include handwritten notes of a February 28, 1996, meeting involving Lambert, Stokes, and Navedo. Stokes presented pie charts to the Union. The parties discussed various proposed provisions in the contract. Respondent rejected the Union's proposal to grant housekeeping employees $3.25 for extra rooms. The Union countered by offering $3 for 1st year, $3.10 for year 2 and $3.25 for year 3.

Jose Navedo was removed as the union's negotiator. Harvey Totzke of the Union, wrote Respondent on March 18, 1996, that two other union agents had been assigned to function as union business representatives.

Ruth Cinque testified for Respondent. She is a waitress for Respondent and was a member of the union negotiating committee. She testified that the parties reached tentative agreement on a number of issues while Jose Navedo represented the Union. Those agreements included that five people at a table rather than eight, were all that was required to justify an automatic service charge in the Baskerville dining room of the hotel.

Arthur Wilton testified that he is a bartender for Respondent. Wilton was a shop steward and he met with Jose Navedo regarding negotiations with Respondent. Once, shortly before Navedo left the Union, Navedo told Wilton that negotiations were going smoothly and that things should be wrapped up soon.

Harvey Totzke was the chief union negotiator from April 19, 1996. Union Business Agent Margie Engels was also involved in negotiations from that time. Both Totzke and Engels testified. Earl Rankin testified that he was on the union negotiating committee during 1995 and 1996.

At the time Totzke and Engels became involved, the parties had not reached agreement. The prior agreement was still in effect (GC Exh. 5). The parties had before them a proposal by Respondent dated December 13, 1995 (GC Exh. 4). That proposal was captioned "Employer's First Complete Contract Proposal." After having submitted a contract proposal on December 5, the Union submitted a counterproposal during the first meeting attended by Totzke and Engels on April 19, 1996 (GC Exh. 6).

Respondent's notes for a April 19, 1996 meeting show that Lambert, Stokes, Union Representatives Totzke, Fabian, and Engels were present along with employee members of the union negotiating committee. The Union presented a revised counter proposal on wages, which showed movement toward Respondent's position. The parties agreed to meet "next Tuesday." The notes show that Harvey Totzke stated he was ready to negotiate to finalize on Tuesday, and Stokes replied that he doesn't negotiate 24 hours per day any longer but would meet for several hours to address all necessary issues.

When the parties met in negotiations on April 23, 1996, Respondent addressed the proposals included in the Union's April 19 counter-proposal. Respondent stated that the Union's proposal was \$215,000 higher than Respondent's and that parties would quickly reach impasse if the Union were to stand on their economic demands. Respondent's spokesman argued that the Union's proposal was for a five percent increase in wages with tip, and that Respondent's proposal was for a 3.4 percent increase. The parties discussed the provisions of the Union's proposals. Respondent agreed to some of the union proposals and rejected others.

The parties met on May 6. Respondent's notes show the parties may have been in agreement as to articles 1, 2, 4, 6, 11, 13, 14, 15, 16, 26, 27, 28, 30, 33, and portions of other articles. Harvey Totzke testified that Respondent proposed that in exchange for grievance with arbitration the employees waive their rights to any other recourse. Totzke took the position that the Union could not agree to waive employees' inherent rights including their right to complain to the NLRB or the EEOC. Respondent argued that such a provision had been agreed to on the west coast by Union Leader John Wilhelm. After a phone call to Wilhelm Totzke agreed to the provision proposed by Respondent.

At a meeting on May 7, Margie Engels presented the Union's position on outstanding issues. The Union agreed to Respondent's proposal to go to personal days off rather than Federal holidays, but there was disagreement on whether personal days could be used as sick days. The Union made some concessions including reducing its proposal for housekeeping pay for extra rooms over 15, to \$3 and its proposed pay increase. Other proposals were either accepted or the Union stood by its former position.

Another meeting was held on May 10. At that meeting, according to Respondent's notes, Respondent spokesman Stokes stated "Contract indicated as "Final" is reference to economics are maxed out in this offer." Respondent explained that it continued to adhere to its position regarding articles 3, 5, 6, 9, and 21 and that it would work with the Union regarding articles 7, 8 and would modify 13, 14, and 15. At the end of that meeting the parties agreed to meet again on May 30 or 31.

Later on May 10, Respondent's attorney requested a meeting and gave Margie Engels a draft document. Stokes discussed the document with Engels. According to Engels' testimony, nothing was said to her about the document being Respondent's final offer (GC Exh. 8). On May 14, Respondent mailed its final draft to the Union. That draft was marked "Grosvenor Resort's final collective-bargaining proposal, May 10, 1996."

Respondent's contract proposal was presented to the Union membership and was voted down. The members also voted to strike but did not strike pursuant to that strike vote. Harvey Totzke testified that he did not intend to strike.

The Union received a letter from Respondent's attorney suggesting consolidation of negotiations into 1 day, May 31. The parties were unable to agree to devote all of May 31 to negotiations. Negotiations were rescheduled to June 24 and 25. The Union prepared a counter-proposal and gave it to Respondent on June 24 (GC Exh. 12). Respondent told the Union that Respondent was not there to negotiate but that the Union had its final offer. Respondent refused to discuss the Union's counter offer saying the parties were at impasse. Respondent advised the Union of its implementation of some of its contract offers. The parties did not meet on June 25.

The parties exchanged letters with Respondent taking the position the parties were at impasse. The Union argued they were not at impasse.

Subsequently Engels and Totzke met with Respondent representatives at Morton's restaurant. The parties met again the following Monday. The Union took down a picket line when Respondent agreed to meet that Monday. The parties negotiated some bargaining issues. The Union agreed to a proposal by Respondent to prohibit striking or picketing.

The parties met again on November 12. Respondent advised the Union that it was not in their interest to continue negotiations. There have been no negotiations since November 12, 1996.

Findings

Credibility

There is no substantial conflict in the context of the bargaining sessions. In large regard I have used and credited the Respondent's notes of several negotiating sessions found in Joint Exhibit 1. To the extent there are conflicts I credit the testimony of Harvey Totzke and Margie Engels in view of my impression of their demeanor and the full record.

Conclusions

Counsel for General Counsel argued that Respondent bargained without intention to reach agreement. In support of that argument General Counsel pointed to several matters. Those included Respondent beginning in January 1996 to prepare for a strike (see testimony of Gary Lambert at Tr. 502–503). Respondent attorney's comments during the April 19, 1996 negotiations that if the Union "continued to propose sick leave then we will be at impasse quickly." (See Tr. 42, 219, 474.) Respondent's initial contract proposal (December 13, 1995) included some 25 items that were regressive when viewed against the parties last contract and that proposal showed no consideration of the Union's December 5, 1995, proposal. In its final contract proposal of May 10, Respondent sought to reduce the scope of the bargaining unit by proposing an increase in the number of hours required before an employee ceased to be part-time from 24 to 30 hours a week and the inclusion of a phrase showing that part-time employees "shall not be covered by this Contract and shall not receive any benefits under this Contract." Respondent proposed on December 13, that it retain the right to unilaterally withdraw vacation, holiday, and health benefits. In its last proposal Respondent sought to retain the right to withdraw health insurance. General Counsel argued that Respondent's attorney engaged in similar tactics in *Radisson Plaza Minneapolis*, 307 NLRB 94, 95 fn. 8 (1992), enfd. 987 F.2d 1376 (8th Cir. 1993). Respondent engaged in holistic bargaining, meaning that there would be no agreement on individual matters unless the parties agreed to the whole contract. General Counsel argued that Respondent prematurely declared that the parties were at impasse and that Respondent made unilateral changes.

Respondent argued that it did not engage in bad-faith bargaining. Instead it pointed out that the initial Chief Union Negotiator Jose Navedo, became more aggressive in the enforcement of the 1992 contract and Navedo told Respondent that he planned to use the 1996 Grosvenor collective-bargaining agreement as a model to assist him in organizing other hotels in the area. (See Tr. 485–486; 206–207; 459, Jt. Exh. 1, December 5, 1995 notes.) Those events led Respondent to believe that the negotiations may be more difficult and contributed to their decision to hire an attorney. Respondent made complete contract proposals on December 13, 1995 and May 10, 1996. It negotiated with the Union 12 times. It presented the Union with pie charts which broke down the hourly pay of every employee and answered the Union's information requests. (See Tr. 58, 280, 282.) Respondent and the Union have had a collective-bargaining relationship for over 25 years and Respondent voluntarily recognized the Union in its maintenance department. The parties agreed on significant issues. Respondent did not engage in regressive bargaining. Respondent cited *Chevron Oil Co. v. NLRB*, 442 F.2d 1067 (5th Cir. 1971); *Illinois-American Water Co*., 310 NLRB 218 (1991); *Concrete Pipe & Products Corp.*, 305 NLRB 152 (1991); *Atlas Metal Parts Co. v. NLRB*, 660 F.2d 304 (7th Cir. 1981). Respondent also argued that the Union's conduct was inconsistent pointing out that it changed negotiators midstream.

The record evidence showed that in some respects Respondent engaged in hard bargaining. In that regard, I find that General Counsel's arguments that Respondent bargained without intention of reaching agreement, was not adequately supported by the record when that issue is isolated from all the circumstances herein. General Counsel pointed out that Respondent made strike preparations beginning in January 1996. I disagree that the record illustrated that Respondent did anything in that regard which illustrated bad faith. I find that there was confusion as to what was occurring in January 1996 and that confusion cut both ways. As argued by Respondent, the record evidence showed that Jose Navedo, the initial chief Union negotiator, told Respondent that he planned to use the 1996 Grosvenor collective-bargaining agreement as a model to assist him in organizing other hotels in the area. (See above.) That action could justify some alarm by any employer which may result in some strike preparations.

I also find that Respondent attorney's comments to the effect that the Union could cause quick impasse, does not demonstrate bad faith. That comment was made during the heat of negotiations and shows nothing more than Respondent's refusal to consider the Union's proposal at that moment.

General Counsel argued that Respondent's initial contract proposal included some 25 items that were "regressive when viewed against the parties last contract and that proposal showed no consideration of the Union's December 5, 1995, proposal." I find that Respondent's actions in that regard when considered in isolation, do not demonstrate bad faith. I am unaware of jurisprudence showing that an employer may not under any circumstances, propose a collective bargaining agreement that is more favorable than its last agreement and whether or not, the Respondent's proposal demonstrated on its face, consideration of the Union's contract proposal, does not establish that Respondent did not consider the Union's proposal. (See, for example, *A.M.F. Bowling Co*., 314 NLRB 969 (1994).)

General Counsel argued that Respondent's position on "holistic" bargaining demonstrated bad faith. However, the record failed to show that matter became an issue and there was no showing that Respondent resisted efforts to discuss individual issues.

Nevertheless, I am convinced that the record does show that Respondent bargained in bad faith.

Respondent declared and continued to insist that its contract proposal dated May 10 was its final offer. As shown above the parties did meet on May 10. According to Respondent's notes, its spokesman stated, "Contract indicated as 'Final' is reference to economics are maxed out in this offer." Respondent's May 10 bargaining session notes show that its spokesman's comments include the following:

> *Article 7*—Will work with union to derive accept language (Prefer shortened)
>
> *Article 8*—(8.03 needs further modified) Reviewed modified position of 8.07 (Meals) only new hires beyond contract execution would pay
>
> . . . .
>
> *Articles 13, 14 and 15*—Need modified yet today
>
> . . . .
>
> Went through several of the Articles to simplify language to make contract more easily read.
>
> *Article 31*—Reviewed corrections

Those comments show that the parties continued to engage in give and take bargaining on May 10. Both parties showed a willingness to move toward agreement.

At the end of the May 10 meeting, the parties agreed to specific future meetings. Union Representative Engels testified that the parties agreed that "each side would go back and prepare—you know, pair down their proposals to what they actually needed, the Union, in order to get a contract that could be ratified and that we would be meeting again then." Subsequently, on May 10, Respondent met with Engels and showed her a contract draft showing on its face that it was their final offer. Respondent then submitted a finished contract proposal to the Union by mail dated May 14, 1996.

On June 24, when the parties next met, the Union presented Respondent with a counter-proposal but Respondent replied it was not there to negotiate and that the Union had received its final contract proposal. Respondent was referring to the proposed contract marked as "Grosvenor Resort's final collective-bargaining proposal, May 10, 1996." Respondent stated that the parties were at impasse and that it was implementing some of its contract proposals. As shown above, Respondent has continued to insist that the parties were at impasse and has refused to negotiate from its May 10 offer in actual negotiations even though it has met with Union representatives on several occasions since June 24, 1996. By its insistence of impasse when its own notes of the last bargaining session show that it continued to engage in give and take negotiations with the Union, Respondent engaged in bad-faith bargaining.

I am also concerned about Respondent's inclusion in its final contract proposal a provision that part-time employees shall not be covered by the contract. That provision must be considered along with Respondent's final contract proposal including the increased limitation of part time up to 30 hours a week. The Board has held that a proposed change in the established collective bargaining unit is a nonmandatory subject of bargaining and that bad faith is proven when a party insist to impasse on a nonmandatory subject. See *Idaho Statesman*, 281 NLRB 272 (1986).

Respondent also included in its last contract proposal its right to unilaterally withdraw health insurance (GC 9, Art. 33.02). General Counsel argued that was tantamount to insisting on elimination of the Union's right to negotiate over a mandatory issue and constituted evidence of bad faith (*Radisson Plaza Minneapolis*, 307 NLRB 94, 95 fn. 8 (1992), enfd. 987 F.2d 1376 (8th Cir. 1993)), and that Respondent would not have been privileged to impose that change even if impasse had been reached because to do so would effectively serve as a waiver of the Union's right to bargain (*McClatchy Newspapers*, 321 NLRB 1386, 1390–1391 (1996)).

As shown above Respondent's agents engaged in unfair labor practices away from the bargaining table. Respondent's supervisor told an employee in June 1996 there was no collective-bargaining agreement and that Respondent could implement changes. Respondent supervisors prohibited an employee from wearing a union baseball cap and threatened that employee with suspension or fine, if he talked to other employees about the Union during work hours. In September, a supervisor told an employee that she could be replaced if she picketed for the Union on her own time and that she may not be given her job back after the strike. The supervisor told the employee that Respondent would implement a change to $3 for each extra room cleaned by housekeeping employees over 15. Then, as shown herein, Respondent did implement a change to $3 for each extra room cleaned over 15.

Unrebutted evidence showed that Respondent announced and unilaterally implemented a change to $3 in housekeeping for extra rooms over 15. Respondent did not make that proposal during negotiations. In fact that proposal was made by the Union and rejected by Respondent. By unilaterally implementing that practice Respondent illustrated bad faith. Respondent also engaged in bad-faith negotiations regarding the issue of personal days off. The record showed that the Union agreed to Respondent's proposal to substitute 11 personal days off rather than the former practice of 3 personal days and 8 holidays. However, when Respondent instituted a personal days off policy it included a provision that employees need no longer give 2 weeks' advance notice and that for the first year employees would not be charged for holidays used since their last anniversary date. That evidence showed that the implemented personal-days off policy was more liberal toward the employees that what Respondent had proposed during negotiations. In that regard, see GC 28 and the testimony of Feliza Ryland which is credited below.

As shown above, Respondent argued that the Union's conduct was inconsistent pointing out that it changed negotiators midstream. However, Respondent also offered testimony showing that it was unhappy with the Union's initial negotiator and it was due in some measure to comments by him that Respondent prepared itself for more difficult bargaining. Within 3 weeks after the Union brought in its new chief negotiator on April 19, Respondent presented the Union with what it has continued to claim was its final offer. I am convinced that the change in chief negotiators by the Union did nothing, which justified Respondent's action. There was no showing that Respondent expressed dissatisfaction with the Union's change in negotiators at the time the change was made. Nor is there support for a contention that the Union's change contributed to difficulties in negotiations. As shown, Respondent's notes of negotiation sessions show that the parties were moving toward agreement when they last negotiated on May 10, 1996.

Subsequent to June 24, Respondent agreed to the Union's request that the parties meet with a federal mediator on September 5 and 6, 1996. General Counsel argued that action, among others, shows that the parties had not exhausted collective bargaining, citing *Powell Electrical Mfg. Co*., 287 NLRB 969 (1987). I agree with counsel for General Counsel. Respondent appeared to try and play both hands of declaring impasse while holding out the possibility of further concessions through negotiations.

Respondent was premature in declaring impasse. The evidence shows that Respondent first presented the Union with a draft of its final contract on May 10. Earlier on May 10 during negotiations, Respondent had advised the Union among other things, that it would work with the Union regarding articles 7, 8 and would modify articles 13, 14, and 15 and it agreed to future negotiation meetings.

As shown above, the record also shows that Respondent's final contract proposal was dated some 3 weeks after the Union changed negotiators on April 19, 1996. According to the testimony of Gary Lambert of Respondent, the Union removed a negotiator that was causing friction with Respondent by, among other things, declaring that he would use the Union's contract with Respondent to organize other hotels in the area. Nevertheless, Respondent gave the new union negotiators inadequate time to engage in meaningful negotiations before declaring impasse. The record shows that the parties were never "at the end of their rope" in negotiations and that Respondent's declaration of impasse was made in bad faith[1] (*Larsdale, Inc*., 310 NLRB 1317,

[1] Respondent pointed out in its brief, testimony on cross examination of Margie Engels, about a meeting involving Totzke, Engels and Arch

1318 (1993); *RBE Electronics of S.D., Inc*., 320 NLRB 80 (1995).

General Counsel alleged that Respondent engaged in unilateral changes since June 28, 1996, including:

> General Wage Increase:
> Increase in insurance premiums:
> New personal days off program:
> Premium pay for culinary chefs:
> Premium pay for cleaning extra rooms:

Feliza Ryland had worked in housekeeping for 12 years and was the Union steward. She was on the negotiating committee. Ryland testified that the Union first proposed an increase from $2 to $3.50 as extra pay for cleaning rooms in excess of 15. Eventually the Union reduced its proposal to $3 but Respondent never agreed to that proposal. However, Respondent implemented an increase to $3 even though it had refused to agree to that proposal during negotiations. The Union also eventually agreed to Respondent's proposal to use 11 personal-days off rather than 3 holidays and 8 personal days. Ryland testified that Respondent implemented an 11 personal days off practice which included a more liberal practice than Respondent proposed during negotiations (see above).

The parties stipulated that Respondent implemented a general wage increase on or about July 1997 in accord with proposals included in the wage scale attachments to Respondent's May 14 contract proposal (GC Ex 9). The parties stipulated that Respondent implemented a general increase in the culinary chefs' pay level and the parties stipulated that Mark Rawlins met with housekeeping employees in September 1996 and informed those employees that Respondent had negotiated contracts with wholesale suppliers whereby those suppliers agreed to pay an additional amount of money which would be given to housekeeping employees in the amount of an additional $1 per room and that that additional $1 per room was paid over and above the contract amount of $2 premium pay from September 1996.

Findings

Credibility

I was impressed with the demeanor of Feliza Ryland and I credit her testimony. I also credit the parties' stipulation.

Conclusions

The credited evidence proved that Respondent unilaterally implemented $3 premium pay for cleaning in excess of 15 rooms; a more liberal 11 personal days off per year policy; a general wage increase and a general increase in culinary chefs' pay level; and an additional $1 per room over and above the $2 premium pay for housekeeping employees.

General Counsel alleged that the employees engaged in an unfair labor practice strike since on or after September 27, 1996.

General Counsel alleged that Respondent discharged the employees alleged in paragraph 16(a), because they engaged in a strike:

On September 24, 1996, the Union held a meeting for members. Union members were notified of the meeting by a flyer that mentioned the pending unfair labor practice charge involving Earl Rankin. Harvey Totzke and Margie Engels spoke. The employees were told that the Union had filed unfair labor practice charges against Respondent regarding allegations that Respondent had unlawfully prohibited display of union insignia, that Respondent had unilaterally changed working conditions including increasing its housekeeping room bonus from $2 to $3 and that Respondent had engaged in bad-faith bargaining. General Counsel introduced a June 26, 1996 memo from Respondent's director of human resources to all management and supervisors, stating that Respondent was ready to implement the terms of its last contract offer and recommending that managers follow principles of scheduling by seniority whenever possible (GC Exh. 26). The July 3, 1996 Grosvenor News, set out some changes in working conditions including an increase in group insurance premiums, that July 4 is a paid holiday, and a change in the personal time/holidays policy from 1 of 3 personal days and 8 holidays to 1 of 11 personal days a year (GC Exh. 28).

Feliza Ryland and Debra Goodman testified about the September 24, 1996 union meeting. Harvey Totzke talked to them about unfair labor practices. He said the Union had an unfair labor practice charge alleging that Respondent had unlawfully prevented Earl Rankin from wearing his union hat. Ryland, Goodman, Totzke, and Engels testified that they were told the strike would be an unfair labor practice strike. Totzke said that Respondent had implemented different things like the $3 bonus for housekeepers. A vote was taken. The ballots stated "Should we strike the Hotel to protest their bad-faith bargaining and unfair labor practices?" The members voted to strike. Those including housekeeping employees Feliza Ryland and Debra Goodman struck Respondent beginning on September 27, 1996.

Feliza Ryland testified that she was given a letter from Respondent (GC Exh. 29) on the morning of September 27. The letter stated:

> Please return to work to your scheduled shift immediately or you may be replaced.

The parties stipulated that everyone named in paragraph 16(a) of the complaint received letters similar to the one received by Ryland on September 27. Those listed in paragraph 16 (a) include:

Andres Alvarez	Robert Baity
Rosetta Brown	Hector Caban
Gilberto Caranza	Dorothy Collier
Ella Mae Davis	Lindsey Day
Carlos Delgado	Enoch Deneus
Oslaine Desir	Aida Febles

Stokes at the Hyatt Regency on June 4, 1997. That was a year after Respondent's declaration of impasse and there was no showing that meeting was intended to serve as a negotiation meeting. Engels admitted that Harvey Totzke stated they were not there to negotiate. The credited record failed to support Respondent's argument that that meeting was the parties last chance to resolve economic issues that precipitated the strike. Respondent had consistently refused to negotiate since June 1996. It had not given the Union an opportunity to resolve economic issues since that time. Moreover, the strike had occurred some 9 months before the June 4, 1997 meeting, and the striking employees had made unconditional offers to return to work in November 1996. Therefore, it is illogical to believe that a meeting in June 1997, could have prevented the strike.

Maria Gillaspie	Deborah Goodman
Israel Hernandez	Lidia Hernandez
Maria Hernandez	Betty Jackson
Mollie Jackson	Jules Josaphat
Therese Josaphat	Dorzelia Joseph
Marie Laguerre	Paul Leblanc
Adisseau Louisius	Martin Malagon
Lourdes Matos	Frederick Meradin
Deborah Montgomery	Chaeirable Ovince
Joseph Pascal	Louis Preval
Maria Quevedo	Earl Rankin
Isidro Rodriquez	Feleza Ryland
Andriana Sepulueda	Raymond Smith
Flor Javier	Cleofas Viscaine
Margarita Jimenez	Flossie Williams
Francisco Abrell	Norma Jiminez

Ryland received a second letter (GC Exh. 30) from Respondent dated September 30, 1996:

> *FELIZA RYLAND,* you were given notification advising you to report to work as scheduled. You failed to report to work.
>
> We had an obligation to operate this hotel and service our guests. This our product. This is not a manufacturing plant. Service is our business. Therefore*, YOU HAVE BEEN PERMANENTLY REPLACED.*
>
> Please come to the entrance of the westside parking lot (the lot nearest the Disney Village MarketPlace) *between* Noon and 2PM on Thursday, October 3rd, 1996. Bring all your uniforms, hotel ID/timecard, and any other property belonging to Grosvenor Resort in your possession, and we will release your final check to you at that time at this location. We will have a van parked on the grass so that you do not have to enter the parking lot. If you have any outstanding vacation pay, that will be included with your final wages paid at that time.

The parties stipulated that all those named in paragraph 16(a) of the complaint received letters similar to General Counsel Exhibit 30.

Feliza Ryland received another letter (GC Exh. 31) from Respondent dated December 27, 1996:

> You went out on strike effective September 27th, pursuant to the economic position of your union at the bargaining table. We encouraged you not to strike, but to continue working. We offered you the opportunity to continue in your job despite the economic impasse between the union and the hotel. You struck anyway and have been on strike ever since. We hired permanent replacements for you and other strikers, since we had to operate the hotel.
>
> While these permanent replacements are still working at the hotel in each of the positions of the strikers, there will be a few positions for which we will hire new employees.
>
> If you wish to apply for a position of Room Attendant, please apply between the hours of 9:00 am and 4:00 pm, Monday through Thursday, in the Human Resources office. As is the case with other applicants, you are not authorized to visit other areas of the hotel while you are applying for a position.
>
> Please note that this is a brand new position subject to all conditions of new employment.

The parties stipulated that all those named in paragraph 16(a) of the complaint received letters similar to General Counsel Exhibit 31.

Respondent mailed a letter similar to General Counsel Exhibit 31, on May 5, 1997, to the following employees:

Deborah Goodman	Feleza Ryland
Raymond Smith	Chaeirable Ovince
Martin Malagon	Dorzelia Joseph
Mollie Jackson	Betty Jackson
Lindsey Day	Maria Gillaspie
Ella Mae Davis	Rosetta Brown
Hector Caban-Gaston	Jules Josaphat
Adisseau Louisius	Frederick Meradin
Israel Hernandez	Lourdes Matos
Maria Hernandez	Lidia Hernandez
Norma Jimenez	Flossie Williams
Enoch Deneus	Cleofas Viscaino
Adriana Sepulueda	Robert Baity
Dorothy Collier	Oslaine Desier
Joseph Paschal	

Around the middle of July 1997, Feliza Ryland received another letter from Respondent:

> You went out on strike effective September 27th, pursuant to the economic position of your union at the bargaining table. We encouraged you not to strike, but to continue working. We offered you the opportunity to continue working. We offered you the opportunity to continue in your job despite the economic impasse between the union and the hotel. You struck anyway and have been on strike ever since. We hired permanent replacements for you and other strikers, since we had to operate the hotel.
>
> Our records reflect that your permanent replacement has left and you will be considered on a priority re-hire basis for a new opening in that classification as it becomes available. However, you must apply for that position within a reasonable time once it is available or we will be forced to consider other applicants to fill the opening.
>
> If you wish to apply and be considered for a newly open position, please apply between the hours of 9:00 am and 4:00 pm, Monday through Thursday, in the Human Resource office. As is the case with other applicants, you are not authorized to visit other areas of the hotel while you are applying for a position.
>
> Please note that this is a brand new position subject to all conditions of new employment.

The parties stipulated into evidence similar letters received by Louis Preval, Therese Josaphat, and Flor Javier (see GC Exh. 32).

Findings

Credibility

In view of my findings, the demeanor of the witnesses and the full record, I credit the testimony of Feliza Ryland, Debra Goodman, Harvey Totzke, and Margie Engels and stipulations of the parties. Respondent's witnesses either did not attend the September 24 meeting (Ruth Cinque) or confessed to failure to recall matters that did not directly affect him (Arley Arwood).

Conclusions

Respondent argued that the September 1996 strike was an economic strike. In support of that argument it pointed out that the Union had filed only one unfair labor practice charge between the June 1996 strike vote and the September 27 strike. Actually, as Respondent correctly noted earlier in its brief, the Union filed a charge in Case 12–CA–18190 on July 3, 1996, and another charge, in Case 12–CA–18381, on September 23, 1996. The July charge involved the allegations regarding Earl Rankin and the September charge involved alleged unilateral changes. Additionally, as shown, on the day after the Union filed the charge in Case12–CA–18381, it held a meeting and voted to strike.

The strike vote was taken on September 24, 1996. Before that vote representatives of the Union explained the significance of an unfair labor practice strike and that Respondent had engaged in unfair labor practices by unlawfully preventing employee Earl Rankin from wearing a union cap; that Respondent had engaged in bad-faith bargaining and that Respondent had unlawfully implemented changed working conditions. The employees then struck on September 27, 1998. Leaflets were distributed by picketing employees that stated, among other things, that the employees of Grosvenor Resort are on strike protesting the Employer's unfair labor practices. The evidence proved and I find that the employees were motivated to engage in the September 27 strike by Respondent prohibiting Earl Rankin from wearing a union cap, by Respondent's bad-faith bargaining any by Respondent's unilateral changes. In view of my findings herein that Respondent did thereby engage in unfair labor practices, I find that the employees strike was an unfair labor practice strike from its inception. *R & H Coal Co*., 309 NLRB 28, enfd. 16 F.3d 410 (4th Cir. 1994); *C-Line Express*, 292 NLRB 638 (1989).

In view of my determination that Respondent's employees engaged in an unfair labor practice strike from September 27, I shall apply the rule that Respondent is obligated to reinstate unfair labor practice strikers upon their unconditional offer to return to work. As shown below I find that the striking employees made unconditional offers to return to work on or around November 15, 1996. See *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956).

Despite those findings, I am not convinced that the Respondent's letters to striking employees as shown above, on September 27, and September 30, constitute notification of termination. However, the letter of December 27 was mailed by Respondent after the striking employees' November 15, unconditional offers. Respondent advised the strikers in that letter of their permanent replacement and that it would consider them only for new positions. In view of the fact that unfair labor practice strikers are entitle to reinstatement even though such action may necessitate the termination of replacement employees, I find that Respondent's December 27 letter constitutes notification of discharge. That action by Respondent constitutes an additional violation of provision of Section 8 of the Act.

General Counsel alleged that the striking employees made an unconditional offer to return to work on November 15, 1996, and Respondent has refused to reinstate those employees:

The parties stipulated that Respondent received letters signed by 40 of the employees alleged in paragraph 16(a) of the complaint excluding Ella Mae Davis, Francisco Abreu, Frederick Meradin, and Raymond Smith within 2 weeks of November 15, 1996. Each letter included a phone number where the respective employee could be reached.

The parties stipulated that Respondent received similar letters from Ella Mae Davis within 2 weeks of November 26; from Francisco Abreu within 2 weeks of December 2; and from Frederick Meradin within 2 weeks of November 16, 1996. The parties stipulated that Respondent received an unconditional offer to return to work by letter from Raymond Smith no later than August 7, 1997. Those letters included the following (GC Exh. 20):

> Pursuant to my rights under federal law, I hereby request to return to work; I make this request without preconditions.
>
> As shown above striking employees received a letter from Respondent dated December 27, 1996:
>
> You went out on strike effective September 27th, pursuant to the economic position of your union at the bargaining table. We encouraged you not to strike, but to continue working. We offered you the opportunity to continue in your job despite the economic impasse between the union and the hotel. You struck anyway and have been on strike ever since. We hired permanent replacements for you and other strikers, since we had to operate the hotel.
>
> While these permanent replacements are still working at the hotel in each of the positions of the strikers, there will be a few positions for which we will hire new employees.
>
> If you wish to apply for a position of Room Attendant, please apply between the hours of 9:00 am and 4:00 pm, Monday through Thursday, in the Human Resources office. As is the case with other applicants, you are not authorized to visit other areas of the hotel while you are applying for a position.
>
> Please note that this is a brand new position subject to all conditions of new employment.

Around the middle of July 1997, Feliza Ryland received another letter from Respondent:

> You went out on strike effective September 27th, pursuant to the economic position of your union at the bargaining table. We encouraged you not to strike, but to continue working. We offered you the opportunity to continue working. We offered you the opportunity to continue in your job despite the economic impasse between the union and the hotel. You struck anyway and have been on strike ever since. We hired permanent replacements for you and other strikers, since we had to operate the hotel.

> Our records reflect that your permanent replacement has left and you will be considered on a priority re-hire basis for a new opening in that classification as it becomes available. However, you must apply for that position within a reasonable time once it is available or we will be forced to consider other applicants to fill the opening.
>
> If you wish to apply and be considered for a newly open position, please apply between the hours of 9:00 am and 4:00 pm, Monday through Thursday, in the Human Resource office. As is the case with other applicants, you are not authorized to visit other areas of the hotel while you are applying for a position.
>
> Please note that this is a brand new position subject to all conditions of new employment.

The parties stipulated into evidence similar letters received by Louis Preval, Therese Josaphat, and Flor Javier (see GC Exh. 32).

The parties stipulated that bargaining unit jobs have not changed; that Respondent has continued to do some hiring in actual bargaining unit; and there may be some positions for which there was no hiring, since November 1996.

Findings

Credibility

As shown, I credit the above evidence including stipulations of the parties and testimony of Feliza Ryland.

Conclusions

As shown above Respondent's December 27 letter was mailed by Respondent after most of the striking employees' submitted unconditional offers around November 15, 1996. Respondent advised the strikers in that letter of their permanent replacement and that it would consider them only for new positions. In view of the fact that unfair labor practice strikers are entitled to reinstatement even though such action may necessitate the termination of replacement employees, I find that Respondent's December 27 letter constitutes notification of discharge.

Respondent refused to reinstate the striking employees for a substantial period after the November and December unconditional offers to return to work. Finally, as shown above, later in 1997, Respondent offered possible re-employment to the strikers, on its assertion that their replacements had left the hotel's employ. The positions offered were new positions subject to all conditions of new employment. Respondent's offer did not comply with its requirement to reinstate unfair labor practice strikers. I find that the striking employees made unconditional offers to return to work and that Respondent refused to reinstate those employees.

CONCLUSIONS OF LAW

1. Grosvenor Orlando Associates, Ltd. d/b/a the Grosvenor Resort is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Hotel Employees & Restaurant Employees Union, Local 55, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent by threatening its employee that there was no contract with its employees' exclusive collective-bargaining agent and that it could unilaterally make changes in wages, hours, and working conditions; by prohibiting its employee from discussing the Union during work and by threatening its employee with being sent home or fined because the employee talked to another employee about the Union; by discriminatorily prohibiting its employee from wearing a union baseball cap; by threatening its employee that the employee could not picket, that the employee would be considered a striker and replaced and recalled at Respondent's discretion after picketing; and by promising its employee that it had instituted a unilateral change by scheduling work by seniority and planning to grant $3 bonus for cleaning rooms in excess of 15 each day; engaged in activity violative of Section 8(a)(1) of the Act.

4. Respondent, by bargaining in bad faith with Hotel Employees & Restaurant Employees Union, Local 55, AFL–CIO, as the exclusive collective-bargaining representative of its employees in the following appropriate bargaining unit; by prematurely declaring an impasse in collective-bargaining negotiations with the Union; and by unilaterally changing wages, hours, and terms and conditions of employment at a time when the parties had not reached impasse; engaged in activity violative of Section 8(a)(1) and (5) of the Act:

> All housekeeping employees, bellpersons, cashiers, convention setup employees, lounge employees, dining room employees, pool bar and grill employees, kitchen department employees, room service employees, banquet employees, servi-bar employees, and maintenance department employees, but excluding casual employees, guards, and supervisors as defined in the Act.

5. Respondent by discharging the following employees because of their unfair labor practice strike has engaged in conduct in violation of Section 8(a)(1) and (3) of the Act:

Andres Alvarez	Robert Baity
Rosetta Brown	Hector Caban
Gilberto Caranza	Dorothy Collier
Ella Mae Davis	Lindsey Day
Carlos Delgado	Enoch Deneus
Oslaine Desir	Aida Febles
Maria Gillaspie	Deborah Goodman
Israel Hernandez	Lidia Hernandez
Maria Hernandez	Betty Jackson
Mollie Jackson	Jules Josaphat
Therese Josaphat	Dorzelia Joseph
Marie Laguerre	Paul Leblanc
Adisseau Louisius	Martin Malagon
Lourdes Matos	Frederick Meradin
eborah Montgomery	Chaeirable Ovince
Joseph Paschal	Louis Preval
Marie Quevedo	Earl Rankin
Isidro Rodriquez	Feleza Ryland
Andriana Sepulueda	Raymond Smith
Flor Javier	CleofasViscaine
MargaritaJimenez	Flossie Williams
Francisco Abrell	Norma Jiminez

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

In view of my finding that Respondent has discharged and refused to reinstate the below named employees upon their unconditional offer to return to work following their unfair labor practice strike, I order Respondent to offer each of them, immediate and full reinstatement to their former positions or, if any of those positions no longer exist, to a substantially similar position, displacing if necessary, employees hired since on or about September 27, 1996, without prejudice to their rights and privileges previously enjoyed, and to make each whole for all loss of wages or other benefits, caused by its failure to reinstate each employee immediately upon that employee's unconditional offer to return to work:

Andres Alvarez	Robert Baity
Rosetta Brown	Hector Caban
Gilberto Caranza	Dorothy Collier
Ella Mae Davis	Lindsey Day
Carlos Delgado	Enoch Deneus
Oslaine Desir	Aida Febles
Maria Gillaspie	Deborah Goodman
Israel Hernandez	Lidia Hernandez
Maria Hernandez	Betty Jackson
Mollie Jackson	Jules Josaphat
Therese Josaphat	Dorzelia Joseph
Marie Laguerre	Paul Leblanc
Adisseau Louisius	Martin Malagon
Lourdes Matos	Frederick Meradin
Deborah Montgomery	Chaeirable Ovince
Joseph Paschal	Louis Preval
Marie Quevedo	Earl Rankin
Isidro Rodriquez	Feleza Ryland
Andriana Sepulueda	Raymond Smith
Flor Javier	CleofasViscaine
MargaritaJimenez	Flossie Williams
Francisco Abrell	Norma Jiminez

I order Respondent, upon request by the Union, to rescind its unlawful unilateral changes in wages, hours, and terms and conditions of employment and to immediately bargain in good faith with Hotel Employees & Restaurant Employees Union, Local 55, AFL–CIO, as the exclusive collective-bargaining agent for the below described bargaining unit:

> All housekeeping employees, bellpersons, cashiers, convention setup employees, lounge employees, dining room employees, pool bar and grill employees, kitchen department employees, room service employees, banquet employees, servi-bar employees, and maintenance department employees, but excluding casual employees, guards, and supervisors as defined in the Act

[Recommended Order omitted from publication.]